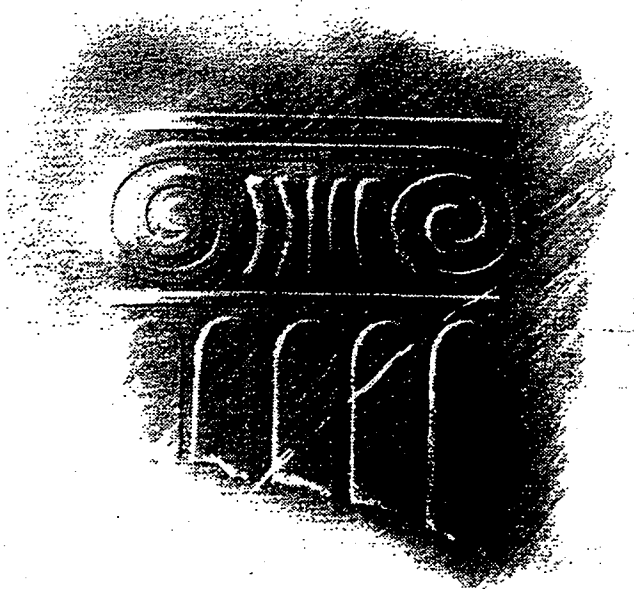
EXHIBIT 96

Tribunal Arbitral du Sport

Court of Arbitration for Sport



ARBITRAL AWARD

Mr. Fritz AANES, Gävle, Sweden

v/

FEDERATION INTERNATIONALE DE LUTTES ASSOCIEES (FILA), Lausanne, Switzerland

TAS 2001/A/317 – Lausanne, July 2001

CAS 2001/A/317 Aanes v/FILA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President : Mr. Dirk-Reiner **Martens**, Attorney-at-law, Munich, Germany

Arbitrators : Mr. Odd Seim **Haugen**, Attorney-at-law, Oslo, Norway
Mr. Jean-Philipp **Rochat**, Attorney-at-law, Lausanne, Switzerland

Ad hoc Clerk : Mr. Frank **Oschütz**

in the arbitration between

Mr. Fritz Aanes, Gävle, Sweden
represented by Mr. Erik Flaagan, attorney-at-law in Oslo, Norway

v/

Fédération Internationale de Luttes Associées (FILA), Lausanne, Switzerland
represented by Mr. Jean-Pierre Morand, attorney-at-law in Geneva, Switzerland, assisted by Mr. Michel Dusson, FILA Secretary General

* * * * * * * * * *

By decision of the IOC Executive Board of October 1, 2000, Mr. Aanes was disqualified and excluded from the Games of the XXVII Olympiad for the use of prohibited substances (Chapter II, Article 2.2 of the Olympic Movement Anti-Doping Code). He did not challenge this disqualification.

Upon the request of the Norwegian delegation, the test of the B-sample (No. B403123) was carried out by the ASDTL on October 3, 2000 in the presence of Mr. J. Segura and Mr. S. Nolan. No member of the Norwegian delegation was present at the opening of the B-sample since the Chef de Mission and all physicians had already left for Norway. The test result of the B-sample confirmed the result of the A-sample.

On the basis of documentary evidence provided to him on October 23, 2000 by FILA, and "based on clause 13 of the FILA Disciplinary Rules" on October 24, 2000, the FILA Sport Judge suspended Mr. Aanes from all national and international wrestling competitions for a period of two years. On November 3, 2000 this decision was notified to the Norwegian Wrestling Federation and subsequently communicated by it to Mr Aanes. Mr. Aanes and the Norwegian Wrestling Federation unsuccessfully challenged this decision before internal FILA instances.

Over a period of several months prior to the Olympic Games in Sydney Mr. Aanes had taken 8 to 10 different vitamins/nutritional supplements in accordance with a schedule developed by his sponsor, the witness Anders Lindquist who is a wholesaler of health products in Sweden. During this period Mr. Aanes underwent several doping control tests which were always negative. Approximately 5 to 6 weeks before the Sydney Olympic Games Mr. Aanes began taking six tablets a day of Pyrovate 500, a nutritional supplement produced by the US-company Pinnacle and recommended and supplied to Mr. Aanes by Mr. Lindquist. Mr. Aanes did not undergo a doping test after he began taking Pyrovate 500 until the positive test at the Olympic Games. When already in Australia in a training camp Mr. Aanes' trainers heard that a Norwegian weight-lifter had tested positive for nandrolone and that food supplements were suspected to be responsible for this result. As a consequence, the labels of every product taken

by Mr. Aanes, in particular the Pyrovate 500 label, were checked as to whether the products contained any prohibited substances. The label did not show any such substance and Mr. Aanes continued to take – inter alia – Pyrovate 500. Following Mr. Aanes' positive doping test in Sydney Pyrovate 500 was tested by the IOC accredited laboratory in Cologne. The test revealed the presence of anabolic androgenic steroids (nandrolone precursors) which were not declared on the label.

II.2 THE PARTIES' POSITIONS

II.2.1 Appellant's position

The Appellant claims that his rights were infringed during the internal FILA-proceedings since he was not given the benefit of a fair hearing before the decision of the FILA Sport Judge.

With respect to the merits of the case Appellant contends that Respondent cannot rely on "strict liability". Athletes who have broken the rules without intent or negligence should not be punished. According to Appellant this concept has also been applied by Norwegian law and is the only approach consistent with the Council of Europe's Anti Doping Convention and Article 6 Sect. 2 of the European Convention on Human Rights (ECHR).

Moreover, since the FILA doping regulations required "use" of a forbidden substance, they themselves showed that an intentional element was required for a doping offence. Since Appellant took the forbidden substance neither intentionally nor negligently, the FILA decision should be annulled.

Even if the FILA doping rules were considered to contain a strict liability regime the Panel should take into account that there was a case of exceptional circumstances which did not warrant a suspension in addition to disqualification from the Olympic Games.

Regarding the product Pyrovate 500 the Appellant observes that neither he nor his trainer were aware of the fact that this supplement could contain a forbidden substance.

Finally, Mr. Aanes adds that all his previous doping tests had been negative and that his clean record should also be considered.

In conclusion Appellant requests that:

"1. Primarily:
The FILA decision has to be declared invalid.

2. Subsidiary:
Mr. Fritz Aanes has to be treated gently.

3. Legal Costs:
The FILA Bureau has to be ordered to pay costs of the case"

II.2.2 Respondent's position

Respondent requests the CAS:

"1. to reject the appeal

2. confirm the decision to suspend the Appellant for a duration of two years

3. order the Appellant to pay to the Respondent an amount (together with interest at 5 % from the date of the decision) representing an appropriate compensation for the costs incurred by FILA in the course of the appeal proceedings, in particular attorney's fees

4. reject any contrary or other claims of the Appellant."

In response to the Appellant's arguments, Respondent concedes that the FILA itself incorrectly referred to its own Anti Doping regime as one of strict liability. A more accurate name would be a regime of a strict burden of proof, where the Federation had to establish that a doping offence had been committed. The definition of the doping offence in the FILA rules did not allow any subjective element of the case to be taken into account. On the other hand it

was left to the athlete to show that the offence was not due to deliberate or negligent behaviour but was the result of - for example - an act of sabotage.

Since in the case in hand it was not contested that a forbidden substance was found in the Appellant's body, in the Respondent's view the suspension was correct since the Appellant was unable to show that he had fulfilled all his duties of care.

The Respondent submits that high level athletes have known for several years that nutritional supplements available from US-American producers may sometimes contain forbidden substances. In this respect Respondent cites press releases by the IOC issued in 1999 and at the beginning of 2000 as evidence of the level of awareness in the sports world. These press releases read as follows:

"LABS BACK IOC POLICY ON TESTING FOR NANDROLONE
Monaco, 6 October 1999

The heads of the twenty-seven laboratories accredited by the International Olympic Committee (IOC) met for their annual plenary session in Monaco on October 5 and 6. During their meetings, the labs reviewed and reaffirmed the effectiveness of the technical guidelines, updated in August 1998, for detecting the presence of nandrolone and its precursors.
The use of anabolic steroids and related substances is prohibited by the IOC. Nandrolone and the related compounds norandrostenedione and norandrostenediol are specifically included in the List of Prohibited Substances published by the IOC Medical Commission.
The IOC has always urged athletes not to take medications or supplements without proper medical supervision. Notwithstanding the athlete's strict personal liability, the lab officials strongly advised governmental authorities to take measures to prohibit the sale, manufacture, and importation of unlicensed preparations of nutritional supplements containing Prohibited Substances whether labelled or not."

"LABS RECONFIRM IOC CONTROL POLICY FOR NANDROLONE
Lausanne, 25 February 2000

Renew Call For Governments To Act Against Unlicensed " Nutritional Supplements "

The heads of the 27 IOC-accredited laboratories reaffirmed their earlier positions on nandrolone and unlicensed "nutritional supplements" during their meetings that took place from 21 to 25 February in Cologne. After extensive discussion, the laboratory heads released the following statement:

At the XVIIIth Manfred Donike Workshop held in Cologne, new research data on nandrolone, its precursors, and its metabolites were presented and discussed. These studies reconfirm the validity of the current reporting criteria used by IOC-accredited laboratories.
Furthermore, several presenters gave examples of the problem of mislabeled "nutritional supplements," which continue to put athletes at risk of contravening the rules. We, therefore, repeat the statement we made last October: We strongly advise governmental authorities to take measures to prohibit the sale, manufacture, and importation of unlicensed preparations of nutritional supplements containing Prohibited Substances, whether labeled or not."

In addition, the case of the other Norwegian athlete who had tested positive for nandrolone just before the Sydney Games showed that the Norwegian team had also discovered problems with nutritional supplements. Thus, the Appellant should have been alarmed and should have employed greater care than just checking the labels of the products he was taking. Under these circumstances a simple label check was clearly inappropriate.

The fact that the Appellant tested positive after ingestion of a product which contained a prohibited substance not marked on the label could not in itself provide a valid excuse because this would open a wide door to any kind of abuse. However, Respondent conceded that the special circumstances of the case might allow the sanction to be reduced.

III. PROCEEDINGS

On January 4, 2001 Appellant filed a request for arbitration with the Court of Arbitration for Sport against the decision of FILA's Sport Judge of October 24, 2000.

On February 2, 2001 the CAS issued a notice that the CAS Arbitration Panel for the present dispute (hereinafter the Panel) was constituted in the following composition: Mr. Dirk-Reiner Martens as President, Mr. Odd Seim-Haugen as arbitrator appointed by the Appellant and Mr. Jean-Philippe Rochat as arbitrator appointed by the Respondent.

On February 14, 2001 the CAS, on behalf of the President of the Panel, issued an order of procedure, detailing the procedure for the arbitration. The order of procedure was accepted and countersigned by both parties.

By letter dated February 19, 2001 the Respondent filed its response to the request for arbitration.

A first hearing was held on April 3, 2001 in Lausanne. The Panel was present, assisted by the *ad hoc* clerk Mr. Frank Oschütz, and Mr. Mathieu Reeb, the acting Secretary General of CAS. The Appellant was represented by Mr. Are Johnsen, attorney-at-law in Narvik, Norway who himself was accompanied by Mr. Antero Rinne, Secretary General of the Norwegian Wrestling Association. The Respondent was represented by Mr. Jean Pierre Morand, attorney-at-law in Geneva, Switzerland, assisted by Mr. Michel Dusson, FILA Secretary General.

At this first hearing the parties only discussed the question of whether the appeal had been filed within the time limit provided for under Article R49 of the Code of Sports related Arbitration (hereinafter the "Code").

At the end of this hearing the parties concluded the following arbitration agreement:

Agreement:

"1. The parties agree that the case is to be heard by CAS on the merits for a final and definite decision in accordance with the Code for Sports related Arbitration.
2. The case will be heard by the same Panel."

A second hearing was held on May 15, 2001. The Panel was present, assisted by the *ad hoc* clerk Mr. Frank Oschütz and Mr. Mathieu Reeb, the acting Secretary General of CAS. The Appellant attended the hearing along with Mr. Erik Flaagan, and Ms. Henriette Hillestad Thune, attorneys-at-law in Oslo, Norway. The Respondent was represented by Mr. Jean Pierre Morand, attorney-at-law in Geneva, Switzerland, assisted by Mr. Michel Dusson, FILA Secretary General.

At the hearing the following witnesses were heard: Mr. Anders Lindquist, team leader of Appellant's home club; Mr. Jan Stawowsky, Mr. Aanes' technical trainer; Mr. Oystein Davidsen, the leader of the Norwegian wrestling team at the Olympic Games in Sydney; Mr.

Antero Rinne, Secretary General of the Norwegian Wrestling Federation; Dr. Schamasch, Medical Director of the IOC.

Each witness was invited by the Panel to introduce himself and, as regards statements of fact, to tell the truth subject to the sanctions of perjury in accordance with Articles R57, R44.2 of the Code and Articles 307 and 309 of the Swiss Penal Code. Each witness gave his testimony and was then examined and cross-examined by the parties and questioned by the Panel. The Appellant also gave a declaration and was examined by the Panel.

The parties were given time to present their opening statements and their final arguments, the Respondent having the floor last in accordance with Articles R57, R44.2 of the Code. At the end of the final arguments both sides confirmed their written motions. The parties did not raise any objections in respect of their right to be heard and to be treated equally in the present arbitration proceedings.

After the parties' final arguments, the Panel closed the hearing and reserved its final award.

IV. PROCEDURAL ISSUES

IV.1 JURISDICTION OF THE CAS

The CAS jurisdiction is based on the arbitration agreement reached by the parties on 3 April 2001 but also results from FILA's rules and regulations (Article 37(c) of the FILA Constitution and Article 6 of the FILA Disciplinary Regulations).

IV.2 APPLICABLE LAW

Pursuant to Article R58 of the Code, the Panel is required to decide the dispute according to the applicable regulations of FILA and Swiss law since Respondent has its seat in Switzerland and the parties did not choose a different governing law.

Since the doping control and the analysis of the samples took place after the FILA Congress held on September 22, 2000 in Sydney the Panel will apply the FILA Constitution as amended at that Congress (FILA Official Bulletin No. 166-167/2001) and the FILA Doping Regulations as well as the Disciplinary Regulation in force at that time. For the interpretation of the FILA rules the Panel will have special regard to Swiss law in accordance with Article R58 of the Code.

V. MERITS

V.1 PROCEDURAL OBJECTIONS

The Appellant alleges a violation of his right to be heard since he was not given the opportunity to present his case before the FILA Sport Judge rendered his decision on the suspension.

Indeed, there is no evidence that the FILA Sport Judge heard the Appellant either personally or by written submissions. It seems that he rendered his decision without further inquiries, only on the basis of the documentation on the disqualification by the IOC, provided to him by FILA.

However, the Panel will not deal with this argument in detail. It observes that the CAS has always considered the right to be heard as a general legal principle which has to be respected also during internal proceedings of the federations (G v/ FEI, CAS 91/53, Award of January 15, 1992, Dig. p. 79, 86 f). Federations have the obligation to respect the right to be heard as

one of the fundamental principles of due process.

However, according to Article R57 of the Code, the Panel will hear the case *de novo*. This means that, even if a violation of the principle of due process occurred in the first instance, any such violation may be cured by a full hearing following appeal to the CAS (CAS 94/129, *USA Shooting & Q. v/UIT* CAS Digest, p. 187, 203).

V.2 THE DOPING OFFENCE

The Panel is satisfied that the Appellant committed a doping offence under the relevant FILA Rules as interpreted pursuant to Swiss law.

V.2.1 The Applicable Regulations

Provisions on doping can be found in several places in FILA's regulations (the following quotes are based on the version of the regulations as applicable after the 22 September 2000 FILA Congress).

FILA Constitution

> "Article 9. – Doping
> The absorption of any substance intended to artificially improve the performance of the athlete is strictly prohibited. The IOC's official list is authoritative."
>
> [The French text reads: "L'absorption de toutes substances destinées à accroître artificiellement la performance..."]

The FILA Doping Regulations state the following:

> "Art. 1 – Definition of doping in sport
>
> Doping is defined as the use, intake or administration of any substance that may affect the mental state or the physical performance of the competitor in a positive or negative way.
> ...

Doping consists of

a) the administration, intake and use of substances belonging to the classes of forbidden pharmacological agents and the use of forbidden methods by athletes...,

b) resorting to substances or methods which are potentially dangerous for the athlete's health, or are capable of increasing his performance artificially,

c) the presence in the athlete's organisation of forbidden substances or the certification of the use of methods which are not allowed, by referring to the list provided by the IOC and to its successive updates".

Art. 27 of the FILA Doping Regulations then makes reference to the IOC Anti-Doping Code by stating:

"Art. 27 Particular and Final Provisions

...

2. Concerning anything which is not indicated in these Regulations, the standards and provisions laid down by the IOC's anti-doping code are applicable.

...

6. Bearing in mind that the anti-doping code of the Olympic Movement has been drawn up in close cooperation with the International Federations, it must apply to ... the various Championships ..., to all other competitions organised by the FILA...

Therefore, any problems of interpretation of any article in these Regulations or for any question not dealt with here, must be referred to the IOC's Anti-Doping Code Lausanne 2000."

Finally, the IOC Anti-Doping Code to which the FILA Doping Regulations refer states that (Chapter II Art. 2 and Art. 3):

"Article 2

Doping is:

...

2. the presence in the athlete's body of a Prohibited Substance or evidence of the use thereof or evidence of the use of a Prohibited Method.

Article 3

1. In a case of doping, the penalties for a first offence are as follows:
...
b) If the prohibited substance is one other than those referred to in a) above:
...
III) Suspension from any competition for a minimum period of two years. However, based on specific, exceptional circumstances to be evaluated in the first instance by the competent IF bodies, there may be a provision for a possible modification of the two-year sanction.

2. In case of

a) intentional doping;
...
The sanctions are as follows: [sanctions of up to a life ban]"

The notion of "intentional doping" is further defined in the IOC's Explanatory Memorandum (p. 9):

"With regard to intentional doping, this is a new notion which is added to that of doping as a breach of these rules. The latter exists as soon as the presence of a banned substance has been detected in an athlete's body, independent of any element of intention. Therefore, the athlete has to be punished. Nothing has changed as far as this is concerned. However, in the rare cases where it can be proved that doping was intentional, the Code allows for the imposition of much stricter sanctions..."

As to sanctions, Annex D of the FILA Anti-Doping Regulations provides:

"Sanctions

1. In the event of proving responsibility, the sanctions laid down by the IOC and quoted in annexe 1 which is an integral part of the FILA anti doping regulations. Any updates by the Olympic Movements will be introduced following deliberation by the Executive Committee and defined as follows:

   Constitutes a violation of the anti doping standards:

   A. Administering or use of substances which are part of the following classes of forbidden medication: ... anabolising agents ...

   B. The use of doping practices ...

C. The absorption of substances belonging to the following classes of pharmaceutical classes whose use is subject to restriction: alcohol ...

D. The administration or absorption of the following substances: ephedrine ...

2. For violations mentioned in point 1, letters A, B, C, the following sanctions are applicable:

- two years for the first offence;
- life ban for the second offence."

Finally, with regard to sanctions, Art. 26 of the FILA Doping Regulations provides the following:

"Art. 26 Violations of the anti-doping standards and the relative sanctions
...
4. The FILA, depending on the case, for positive doping results, can apply heavier sanctions than those laid down in the Regulations.

5. The FILA, through its own justice bodies, can find specific and exceptional attenuating circumstances which will enable the sanctions to be reduced."

The Panel finds the provisions on doping in the various FILA regulations rather confusing.

According to the Constitution, doping is the "absorption" of a "substance intended to artificially improve the performance". In turn Art. 1 of the FILA Anti Doping Regulations states that it is sufficient for the substance to "affect" the performance and the same Article declares that "the presence in the athlete's organism of forbidden substances" constitutes a doping offence.

The FILA Doping Regulations then confirm that the IOC Anti Doping Code "must apply" to all FILA competitions and this very IOC Anti-Doping Code states that "Doping is ... the presence in the athlete's body of a Prohibited Substance" and the IOC's Explanatory Memorandum further explains that doping "exists as soon as the presence of a banned substance has been detected in an athlete's body, independent of any element of intention".

Finally, according to Annex D of the FILA Anti Doping Regulations there seems to be a requirement of "proving responsibility" in order for sanctions to be imposed. The same can be concluded from Art. 17.21 of the same regulations which provides for sanctions of a "wrestler at fault".

The Panel observes that this "cocktail" of definitions and legal principles in connection with the fight against doping certainly falls short of the clarity and certainty desirable in an area as sensitive as doping and as demanded by CAS (CAS 94/129, USA Shooting & Q. *v/* UIT, CAS Digest, p. 187, 203). However, in the opinion of the Panel, the lack of clarity in the FILA Regulations does not go quite far enough to justify rejecting them as a whole as being so unclear that they cannot be applied at all. The Panel will therefore apply these rules as they are but will, if necessary, interpret any uncertainties *contra stipulatorem*, i.e. against FILA.

V.2.2 The Objective Element of the Doping Offence

The facts of the case in hand are more straight forward than in most other doping cases:

It is uncontested that a substance prohibited under Art. 6 of the FILA Doping Regulations (metabolites of nandrolone, norandrostenedione or norandrostenediol (19-norandrosterone and 19-noretiocholanolone)) in quantities in excess of that allowed under the FILA rules (2ng/ml according to Article 27.2 of the FILA Doping Regulations; indeed, the Appellant himself states "a level of 8ng/ml of nandrolone") were found in the Appellant's urine sample taken on 27 September 2000. The Appellant admits that he took Pyrovate 500 during the time preceding his doping test and that – according to the findings of the IOC accredited laboratory in Cologne – this product contained anabolic-androgenic-steroids although this was not declared on the label. No challenge has been brought forward with respect to the conduct of the doping test, the chain of custody of the sample or the laboratory analysis.

V.2.3 Interpretation of the FILA Rules; "Strict Liability"

The parties differ in their interpretation of the FILA rules and the consequences to be drawn from them.

According to the Appellant

> "(I)t is clear that athletes, who have not broke the rules of doping with intent or negligently, cannot be punished" (Statement of Appeal dated 5 December 2000)",

while the Respondent is of the opinion that:

> "(T)he doping definition resulting from the applicable FILA Regulations is a strict liability definition. If the presence of a doping agent is established, then the sanction applies. No intention has to be shown." (Answer dated 19 February 2000)".

If, indeed, under the FILA rules no subjective element, i.e. no intent or negligence on the part of the athlete were required for a doping offence to have been committed the Panel would in principle have to apply the two-year sanction provided for in Annex D, Section 2 of the FILA Doping Regulations and would be limited to evaluating whether there are "specific and exceptional attenuating circumstances which will enable the sanctions to be reduced" (Art. 26, Section 5 of the FILA Doping Regulations).

However, the Panel is of the opinion that as a matter of principle and irrespective of "specific and exceptional circumstances" an athlete cannot be banned from competition for having committed a doping offence unless he is guilty, i.e. he has acted with intent or negligence. Even if the rules and regulations of a sports federation do not expressly provide that the guilt of the athlete has to be taken into account the foregoing principle will have to be read into these rules to make them legally acceptable.

CAS panels have to interpret the rules in question in a way „which seeks to discern the intention of the rule maker, and not to frustrate it" (A.C. v/ FINA, CAS 96/149, Award of March 13, 1997, Dig. p. 251, 259).In interpreting the FILA rules the Panel does not find any indication that they intended to ignore the subjective elements as such. Since the Panel is of the opinion that under Swiss law an athlete cannot validly be banned in the absence of any fault (see *infra)*, an interpretation to the contrary would lead to the rules being void which would frustrate the objective of the fight against doping pursued by the entire sporting world.

Before explaining the reasons for the principle of guilt the Panel wishes to clarify that this principle does not apply to the disqualification of a "doped athlete" from the event at which the doping test was conducted. It is therefore perfectly proper for the rules of a sporting federation to establish that the results achieved by a "doped athlete" at a competition during which he was under the influence of a prohibited substance must be cancelled irrespective of any guilt on the part of the athlete. This conclusion is the natural consequence of sporting fairness against the other competitors. The interests of the athlete concerned in not being punished without being guilty must give way to the fundamental principle of sport that all competitors must have equal chances (CAS 94/129 USA Shooting & Q. *v/* UIT, CAS Digest p. 187, 193 et seq.; CAS 95, 141, C. *v/* FINA, CAS Digest, p. 215, 220; CAS 98, 214, B. *v/* FIJ, p. 17; CAS 94/126, N. v/ FEI, p. 8).

The Panel comes to a different conclusion with regard to the suspension of an athlete from future competition. The so-called "strict liability" rule, i.e. a rule as advocated by the Respondent according to which the mere presence of a prohibited substance in an athlete's body justifies his suspension, does not, in the Panel's opinion, sufficiently respect the athlete's right of personality ("*Persönlichkeitsrecht*") as established in Articles 20 and 27 et seq. of the Swiss Civil Code which CAS panels are required to apply (Art. 58 of the Code of Sports-related Arbitration). In fact, under Swiss law also sporting federations are under a duty to respect the framework established by Articles 20 and 27 et seq. Swiss Civil Code (Baddeley, L'association sportive face au droit (1994), p. 227).

As a preliminary remark the Panel wishes to clarify that the legal relations between an athlete and a federation are of a civil nature and do not leave room for the application of principles of criminal law. This is particularly true for the principles of *in dubio pro reo* and *nulla poena sine culpa* and the presumption of innocence as enshrined in Art. 6 ECHR (Swiss Federal Tribunal, ASA Bull. 1993, p. 398, 409 *et seq.* [G. *v/* FEI] and Swiss Federal Tribunal judgment of March 31, 1999 [5P. 83/1999], unreported, p. 12, see also Baddeley, L'association sportive face au droit (1994) p. 220; Scherrer in: Fritzweiler (ed) Doping-Sanktionen, Beweise, Ansprüche (2000), p. 119, 127).

When deciding whether a "strict liability" rule is proper under Swiss law, the Panel has to weigh the interests of the federation against those of the athlete, in particular his right of personality (see Baddeley, L'association sportive face au droit (1994) p. 239).

In recent times the fight against doping has become sport's most burning problem. At times, public attention and, in particular, that of the media is focused more on whether the athletes are under the influence of doping substances than on the sporting event itself and its results. This development is a very serious threat to the entire sporting movement and, indirectly, to an industry which accounts for an important percentage of the world economy.

It is obvious that it would be an important weapon in the fight against doping if the federations were able to impose sanctions on athletes who have tested positive, without having to establish any element of guilt on the part of the athlete. However, this argument, which is one of prevention and deterrence, loses sight of the general objective of doping sanctions, namely the punishment of the athlete for having violated the rules (Baddeley, L'association sportive face au droit (1994), p. 219).

On the other hand, it has to be recognised that in professional sport doping sanctions have the effect of restraining the athlete from carrying out his chosen trade and thus from earning a living for a certain period of time. In addition, doping sanctions clearly affect the honour and social standing of the athlete concerned and are a stigma on his future.

When weighing up the interests of both sides the Panel is of the view that the interests of the athlete take precedence over those of the federation to enforce a rule of "strict liability". The contrary view would only be acceptable if a strict liability rule were the only meaningful weapon in the fight against doping. (see Baddeley in: Fritzweiler (ed.) Doping Sanktionen, Beweise, Ansprüche (2000), p. 9, 22; Scherrer in : Fritzweiler (ed), id. at p. 119, 127; see also CAS 95, 142, L. *v/* FINA, CAS Digest, p. 225, 231). As will be shown below, there are other means, in particular when allocating the burden of proof, to ensure an effective fight against doping without accepting the risk of sanctioning an athlete who is not guilty of an offence or whose level of guilt does not justify the full extent of the sanction.

The Panel further notes that in a recent decision the Court of Appeals of Frankfurt/Main, Germany also held that liability without fault was incompatible with the rights of the athlete and German law (OLG Frankfurt/Main, judgement of May 18, 2000, 13W29/00 [B. *v/* DLV] p. 15).

V.2.4 Allocation of Burden of Proof; Presumption of Guilt and Rebuttal

Having established the principle that the suspension of an athlete for a doping offence requires fault on his/her part, this does not, in the Panel's view, mean that it is for the federation to provide full proof of every element of the offence, as is necessary in respect of a criminal act for which a presumption of innocence operates in favour of the accused. There is no doubt that the federation has to establish and – if contested – to prove the objective elements of the offence, in particular, for example, that the sample was taken properly, that there was a complete chain of custody of the sample on its way to the laboratory and that the analysis of the sample was state-of-the-art. This follows from the general rule that a person who alleges a fact has the burden of proof (CAS 98/208, N. & J. & Y. & W. v/ FINA, Award of December 22, 1998, p. 23; CAS 99/A/234 & CAS 99/A/235, M.M. & M v/ FINA, Award of Febrary 29, 2000, p. 14).

However, it would put a definite end to any meaningful fight against doping if the federations were required to prove the necessary subjective elements of the offence, i.e. intent or negligence on the part of the athlete (CAS 95/141, C. *v/* FINA, CAS Digest, p. 215, 220; CAS 98/214, B. *v/* FIJ, S. 16 et seq.). In fact, since neither the federation nor the CAS has the means of conducting its own investigation or of compelling witnesses to give evidence, means which are available to the public prosecutor in criminal proceedings, it would be all too simple for an athlete to deny any intent or negligence and to simply state that he/she has no idea how the prohibited substance arrived in his/her system (see CAS 96/156, F. *v/* FINA).

For this reason the Panel believes that, with regard to the subjective elements of a doping offence, when weighing the interests of the federation to combat doping and those of the

athlete not to be punished without fault, the scales tip in favour of the fight against doping. In fact, doping only happens in the sphere of the athlete: he/she is in control of his/her body, of what he/she eats and drinks, of who has access to his/her nutrition, of what medication he/she takes, etc. In these circumstances it is appropriate to presume that the athlete has knowingly or at least negligently consumed the substance which has lead to the positive doping test (see also: *Baddeley*, L'association sportive face au droit, (Bâle 1994), p. 243; *Beloff*, Drugs, Laws and Versapaks, in: O'Leary (ed.), Drugs and Doping in Sport, Cavendish 2000, p. 39,49; *Steiner*, Doping aus verfassungsrechtlicher Sicht, in Röhricht/Vieweg (eds.) Doping Forum (2000), p. 125, 134; *Baddeley* in: Fritzweiler (ed.) Doping.-Sanktionen und Beweise (2000), p. 9, 22).

Therefore, if the federation is able to establish the objective elements of a doping offence, there is a presumption of guilt against the athlete.

The principle of presumed fault on the part of the athlete does not, however, leave him without protection because he/she has the right to rebut the presumption, i.e. to establish that the presence of the prohibited substance in his/her body was not due to any intent or negligence on his/her part (CAS 95/141, C. v/ FINA, CAS Digest, p. 215, 220 *et seq.*; CAS 98/214, *B. v/ FIJ*, p. 17). The athlete may for example provide evidence that the presence of the forbidden substance is the result of an act of malicious intent by a third party (CAS 91/56, *S v/FEI*, CAS Digest, p. 93, 97; CAS 92/63, *G. v/FEI*, CAS Digest, p. 115, 121; CAS 92/73, *N. v/FEI*, CAS Digest, p. 153, 157).

It is noteworthy that the Swiss Federal Tribunal has accepted an interpretation of doping rules to the effect that it is admissible to presume an athlete's guilt if he/she has been tested positive for a prohibited substance. The athlete is then accorded the opportunity to rebut the presumption (Swiss Federal Tribunal, CAS Digest, p. 561, 575 [G. *v/* FEI]; Swiss Federal Tribunal, 5P. 83, 1999 [W.C.Z.W. *v/* FINA], unreported, p. 12).

The principle of presumption of guilt and rebuttal thereof by the athlete has also been applied by several CAS decisions, not only with respect of the rules of the FEI which expressly

provide for a presumption of guilt, but also in connection with regulations which appear to follow a system of liability without fault (see CAS 91/56, *S. v/ FEI*, CAS Digest, p. 93, 95; CAS 92/63, *G. v/ FEI*, p. 115, 120; CAS 92/73, *N. v/ FEI*, CAS Digest, p. 153, 157; CAS 92/86, *W. v/ FEI*, CAS Digest, p. 161, 163; CAS 98/204, R. v/ FEI, p. 8; CAS 91/53, *G. v/ FEI*, CAS Digest, p. 79, 87; see especially: CAS 95/141, *C. v/ FINA*, CAS Digest, p. 215, 220; CAS 96/156, *F. v/ FINA*, p. 40 *et seq.*; CAS 98/214, *B. v/ FIJ*, p. 17; CAS 99/A/252, FCLP v/ IWF, p. 22 *et seq.; CAS 2000/A/309, R. v/RLVB, p. 5*). On the other hand, the Panel is conscious of the fact that there have been CAS decisions where the Panel was prepared to apply a strict liability standard with respect to suspensions and was not willing to take into account the subjective elements of the case in questions (see: CAS 98/208, *W. C. Z. W. v/ FINA*, p. 25; CAS 98/222, *B. v/ ITU*, p. 11; see also: CAS 95/150, V. *v/ FINA*, CAS Digest, p. 265, 272). However, it should be noted that all these decisions took account of the level of "guilt" on the part of the athlete when establishing the duration of the suspension. It can also be taken from these awards that their reasoning was often based on arguments invoked to justify a simple disqualification. They did not consider the very purpose of suspensions as opposed to a mere disqualification and the differences between them. For these reasons the Panel is not prepared to follow these decision.

The Panel recognises that the opinions of the courts and legal authorities differ as to whether the reversal of the burden of proof puts too much burden on the athlete. As an example the OLG Frankfurt in its decision of 18 May 2000 (see V.2.3. above) is in favour of a rule pursuant to which the presence of a prohibited substance in an athlete's body provides prima facie evidence of guilt on the part of the athlete; this leaves the athlete with the burden of proving that, in his/her particular case, the facts were different from the normal sequence of events. In many cases the practical results of both scenarios – a reversal of the burden of proof or the rebuttal of prima facie evidence – will be the same, but the Panel does recognise that the burden on the athlete is slightly less in the latter case. The Panel does, however, believe that, as a matter of principle, the reversal of the burden of proof and thus the burden being on the athlete to provide full proof of the absence of intent or negligence, is adequate and appropriate when weighing the interests of both sides.

In the case in hand, in which none of the objective elements of the offence is in dispute, the Appellant is thus presumed do have intentionally or negligently committed the offence.

V.3 FAULT

As has been shown above, the burden is on the Appellant to prove that he is not guilty of a doping offence. To this end, the Panel took the testimony of several witnesses proffered by the Appellant.

It is the opinion of the Panel that the Appellant has not succeeded in proving that he was without fault.

V.3.1 Intent

The Appellant contends that he was not aware that Pyrovate 500 contained a substance which was the source of his positive doping test in Sydney.

In fact, the Panel accepts, in the Appellant's favour, that he did not intentionally take a prohibited substance, in other words, that he did not know that Pyrovate 500 contained precursors of nandrolone. The Panel further assumes, in the Appellant's favour, that his use of Pyrovate 500 was in fact the cause for his positive doping test in Sydney.

V.3.2 Negligence

However, the Panel is of the opinion that under the circumstances the Appellant acted negligently when he took Pyrovate 500 without making certain that it did not contain a prohibited substance.

As a general remark, the Panel observes that the sporting world has, for quite some time even before the 2000 Sydney Games, been well aware of the risks in connection with using so called nutritional supplements, i.e. the risk that they may be contaminated or, in fact, "spiked"

with anabolic steroids without this being declared on the labels of the containers. There have been several cases of positive tests for nandrolone which have been attributed to nutritional supplements and which have been widely publicised in the sports press. This fact was the likely motive for the IOC press releases in October 1999 and February 2000 (II.2.2 above) which give an unequivocal warning about the use of imported and unlicensed nutritional supplements and their possible mislabelling.

Under these circumstances it is certainly not a valid excuse for an athlete to contend that he/she – personally – was not aware of these warnings. In fact, athletes are presumed to have knowledge of information which is in the public domain. In this context, the Panel notes that there is CAS case law to the effect that athletes are themselves soley responsible for, inter alia, the medication they take and that even a medical prescription from a doctor is no excuse for the athlete (CAS 92, 73, N. *v/* FEI, CAS Digest, p. 153, 158). Furthermore an athlete cannot exculpate himself/herself by simply stating that the container of the particular product taken by him/her did not specify that it contained a prohibited substance. It is obvious that the sale of nutritional supplements, many of which are available over the internet and thus sold without an effective governmental control, would go down dramatically if they properly declared that they contain (or could contain) substances prohibited under the rules governing certain sports. Therefore, to allow athletes the excuse that a nutritional supplement was mislabelled would provide an additional incentive for the producers to continue that practice. In summary, therefore, it is no excuse for an athlete found with a prohibited substance in his/her body that he/she checked the label on the product he took and that the label did not specify that the product contained a prohibited substance.

The Panel can leave open the question whether a "doped athlete" can be sanctioned on the basis alone that he/she knew (or is presumed to have known) the risk involved in taking nutritional supplements which may contain a prohibited substance not declared on the label. In the case in hand there are additional elements which establish negligence on the Appellant's part:

In his statement before this Panel the Appellant admitted that during his training camp before the Olympic Games he had been informed that a Norwegian weightlifter had tested positive for nandrolone and that nutritional supplements were suspected to be the cause of his positive test. At that point in time at the very latest the Appellant should have ceased taking a nutritional supplement which, it should be noted, was not prescribed to him by a medical doctor but was supplied by his "sponsor", a wholesaler of health products with a direct economic interest in marketing (and testing) these products in the sports world.

V.4 SANCTION

The rules and regulations of the Respondent (and of the IOC) provide for a two-year sanction in the case of a positive doping test for nandrolone (V.2.1 above). Even though it is well established that a two-year suspension for a first time doping offence is legally acceptable, there are several CAS decisions according to which a sanction may not be disproportionate and must always reflect the extent of the athlete's guilt (CAS 95/141, *C v/ FINA*, CAS Digest, p 215, 222; CAS 92/73, *N v/FEI*, CAS Digest, p. 153, 159; CAS 96/156, *F. v/FINA, p. 48*). Therefore, this Panel in its capacity as an appeals body enjoys the same discretion in fixing the extent of the sanction as the Respondent's internal instances (Art. 26.5 of the FILA Doping Regulations, see V.2.1 above). In fact, the Panel would enjoy this discretion even if there were no "exceptional attenuating circumstances".

When taking into consideration all the elements of this case, in particular the fact that the Appellant acted negligently but without intent to indulge in doping, the Panel is of the view that, based on the evidence produced, there are mitigating circumstances which warrant a reduction of the maximum penalty allowed under the rules and regulations of the Respondent. As a result, the Panel is of the opinion that it is adequate and appropriate to suspend the Appellant for 15 months. As regards the date upon which the suspension should begin, the Panel takes note of the fact that the sanction imposed by the Respondent started to run on the date the test was carried out (27 September 2000). The Panel sees no reason why it should change this date. Therefore, the Appellant's suspension will last until 26 December 2001.

VI. COSTS

The cost decision is based on Art. R65 of the Code.

According to Art. 65.3 the costs of the parties, in particular the parties' witnesses, must be advanced by the parties. The Panel is then called upon to decide which party must bear the costs taking into account the outcome of the proceedings as well as the conduct and financial resources of the parties.

In view of this provision, the Panel decides not to make any award on costs. In reaching its decision, the Panel took into account the following:

It was the Appellant's conduct which made it necessary to hold two hearings in his case. In addition, the Appellant only partially succeeded with his Appeal. More than half of the sanction imposed by the Respondent was considered to be lawful. The outcome of the proceedings would therefore justify the Appellant being ordered to bear part of Respondent's costs.

On the other hand, the Panel has taken into account the fact that the Appellant has incurred considerably more costs in connection with his witnesses and legal counsel than the Respondent. He had to bear the travel expenses of several people who had to travel from Scandinavia to Lausanne while the Respondent has its seat in Lausanne and therefore did not have to pay for any travel expenses.

As a consequence, the Panel considers that there is no need for either party to contribute towards the other party's costs. Thus the award is pronounced without costs.

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ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Mr. Fritz Aanes on 3 January 2001 is partially upheld.

2. The decision of the FILA Sport Judge of 24 October 2000 shall be modified as follows:

   Mr. Fritz Aanes is suspended for a period of 15 months from 27 September 2000 to 26 December 2001.

3. The award is pronounced without costs, except for the Court Office fee of CHF 500.-- (five hundred Swiss Francs) paid by Mr. Aanes which is kept by the CAS.

4. Each party shall bear its own costs.

Lausanne, 9 July 2001
Decision pronounced 31 May 2001

THE COURT OF ARBITRATION FOR SPORT

President of the Panel:

Dr. Dirk-Reiner **Martens**

Arbitrators:

Odd **Seim-Haugen**

Jean-Philippe **Rochat**

Ad hoc Clerk

Frank **Oschütz**